

LAWYERS FOR  
CLEAN WATER

RECEIVED

MAR 29 2005

OFFICE OF THE  
EXECUTIVE SECRETARIAT

Stephen Johnson, Acting Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1100  
Washington, D.C. 20460

Wayne Nastri, Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, California, 94105

Alberto Gonzales, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

21 March 2005

Re: Clean Water Act Complaint Filed Against the Santa Barbara Polo Club et al.

Dear Mr. Johnson, Mr. Nastri, and Mr. Gonzales:

Enclosed, please find a copy of a complaint filed by Santa Barbara Channelkeeper against the Santa Barbara Polo Club, the Santa Barbara Polo and Racquet Club Management Company, Inc., and the Santa Barbara International Polo Training Center, pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (Clean Water Act).

Sincerely,



Eliza Smith  
Lawyers for Clean Water  
Attorneys for Santa Barbara Channelkeeper

San Francisco

1501 A O'Reilly Ave, San Francisco CA 94129  
t 415-561-2222 f 415-561-2223

Santa Monica

2515 Wilshire Blvd, Santa Monica CA 90403  
t 310-829-1229 f 310-829-6820

printed on 100% post-consumer recycled paper

FILED

2005 MAR 17 PM 3:03

CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.

Layne Friedrich (Bar No. 195431)  
Daniel Cooper (Bar No. 153576)  
Eliza Smith (Bar No. 228130)  
LAWYERS FOR CLEAN WATER, INC.  
1004A O'Reilly Avenue  
San Francisco, California 94129  
Telephone: (415) 561-2222  
Fax: (415) 561-2223

Brian Acree (Bar No. 202505)  
LAW OFFICE OF BRIAN ACREE  
2070 Allston Way, Suite 300  
Berkeley, California 94704  
Telephone: (510) 647-1900  
Fax: (510) 647-1905

Attorneys for Plaintiff  
SANTA BARBARA CHANNELKEEPER

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**FAXED**

SANTA BARBARA CHANNELKEEPER,  
a non-profit corporation,

Plaintiff,

v.

SANTA BARBARA POLO CLUB, a  
corporation; SANTA BARBARA POLO  
AND RACQUET CLUB MANAGEMENT  
COMPANY, INC., a corporation; and  
SANTA BARBARA INTERNATIONAL  
POLO TRAINING CENTER, a corporation,

Defendants.

Civil Case No.: CV05-01149-NM(RZx)

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

(Federal Water Pollution Control Act,  
33 U.S.C. § 1251 *et seq.*,  
Resource Conservation and Recovery  
Act, 42 U.S.C. § 6901, *et seq.*)

COPY

1 Santa Barbara Channelkeeper, (hereinafter referred to as "Channelkeeper" or  
2 "Plaintiff"), by and through its counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provisions of  
5 the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the "Clean Water  
6 Act" or the "CWA") and the Resource Conservation and Recovery Act, 42 U.S.C. §  
7 6901, *et seq.* ("RCRA"). This Court has subject matter jurisdiction over the parties and  
8 this action pursuant to Section 505(a)(1) of the CWA (33 U.S.C. § 1365(a)(1)), Section  
9 7002 of RCRA (42 U.S.C. § 6972(a)(1)(B)), and 28 U.S.C. § 1331 (an action for  
10 declaratory and injunctive relief arising under the Constitution and laws of the United  
11 States).

12 2. On December 13, 2004, Channelkeeper issued a notice letter ("Notice  
13 Letter") to Santa Barbara Polo Club, Santa Barbara Polo and Racquet Club Management  
14 Company, Inc., and the Santa Barbara International Polo Training Center (collectively  
15 "Polo Club" or "Defendants") regarding their violations of the Clean Water Act and  
16 RCRA, and of Channelkeeper's intention to file suit against the Defendants. The Notice  
17 Letter was sent to the Administrator of the United States Environmental Protection  
18 Agency ("EPA"), the Administrator of EPA Region IX, the Executive Director of the  
19 State Water Resources Control Board ("State Board"), and the Executive Officer of the  
20 Regional Water Quality Control Board, Central Coast Region ("Regional Board") as  
21 required by the CWA, 33 U.S.C. § 1365(b)(1)(A), and RCRA, 42 U.S.C. §  
22 6972(b)(2)(A).

23 3. On February 15, 2005, Channelkeeper filed a complaint against Defendants  
24 alleging violations of the Clean Water Act for discharging pollutants without a Clean  
25 Water Act permit.

26 4. The 90-day notice period for RCRA claims has passed. Plaintiff is informed  
27 and believes, and thereon alleges, that neither the EPA nor the State of California has  
28 commenced or is diligently prosecuting an action to redress the violations alleged in this

1 complaint. 33 U.S.C. § 1365(b)(1)(B); 42 U.S.C. § 6972(b)(2). This action is not  
2 barred by any prior administrative penalty under Section 309(g) of the CWA, 33 U.S.C.  
3 § 1319(g).

4 5. Venue is proper in the Central District of California pursuant to Section  
5 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), and section 7002(a) of RCRA, 42  
6 U.S.C. § 6972(a) because the source of the violations is located within this judicial  
7 district.

## 8 **II. INTRODUCTION**

9 6. This complaint seeks relief for the Defendants' improper storage, handling,  
10 and disposal of solid waste, and the unlawful and unpermitted discharge of pollutants  
11 into waters of the United States from their operations at 3375 Foothill Rd., #1200, in  
12 Carpinteria, California ("the Polo Facility").

13 7. The Polo Facility contributes and has contributed to the past or present  
14 handling, storage, and disposal of solid waste, specifically horse manure, feed, bedding,  
15 and other stable wastes, in a manner that presents an imminent and substantial danger to  
16 health or the environment in violation of RCRA. 42 U.S.C. § 6972(a)(1)(B).

17 8. The Polo Facility is a Concentrated Animal Feeding Operation ("CAFO"),  
18 which discharges pollutants to waters of the United States, and is required to apply for a  
19 National Pollution Discharge Elimination System ("NPDES") permit. 33 U.S.C. §§  
20 1311, 1342, 1362(14); 40 C.F.R. § 122.23(a).

21 9. The Polo Club has not applied for an NPDES permit for the Polo Facility's  
22 discharges in violation of the Clean Water Act.

## 23 **III. PARTIES**

24 10. Plaintiff Channelkeeper is a non-profit public benefit corporation with a  
25 mission to protect and enhance the water quality of the waters of Santa Barbara County  
26 for the benefit of its members, as well as natural ecosystems and human communities.  
27 Channelkeeper's office is located at 714 Bond Avenue in Santa Barbara, California.  
28

1           11. Channelkeeper is dedicated to the preservation, protection, and defense of  
2 the environment, wildlife, and the natural resources of the waters of Santa Barbara  
3 County and other area receiving waters. To further these goals, Channelkeeper actively  
4 seek Federal and State agency implementation of the CWA and, where necessary,  
5 directly initiates enforcement actions on behalf of itself and its members.

6           12. Members of Channelkeeper use and recreate on, and enjoy the aesthetic  
7 values of the beaches, lakes, rivers, and creeks of Santa Barbara County, including  
8 Padaro Beach and the Pacific Ocean at Padaro Beach, to which the Polo Facility  
9 discharges pollution (hereinafter collectively referred to as "Receiving Waters").

10           13. Members of Channelkeeper use and enjoy the Receiving Waters for  
11 recreational, scientific, aesthetic, educational, conservation and commercial purposes,  
12 including, but not limited to, fishing, boating, kayaking, surfing, fish and wildlife  
13 observation, photography, and hiking on a continuing and ongoing basis. The  
14 Defendants' illegal discharge of pollution to Receiving Waters impairs each of those  
15 uses. Thus, the interests of Channelkeeper's members have been, are being, and will  
16 continue to be adversely affected by Defendants' failure to comply with the Clean  
17 Water Act and RCRA.

18           14. The Santa Barbara Polo Club is a private corporation organized under the  
19 laws of the State of California, and is located in Santa Barbara County, California.  
20 Channelkeeper is informed and believes, and thereon alleges, that the Santa Barbara  
21 Polo Club owns and/or operates the Polo Facility.

22           15. The Santa Barbara Polo and Racquet Club Management Company, Inc. is a  
23 private corporation organized under the laws of the State of California, and is located in  
24 Santa Barbara County, California. Channelkeeper is informed and believes, and thereon  
25 alleges, that the Santa Barbara Polo and Racquet Club Management Company Inc. owns  
26 and/or operates the Polo Facility.

27           16. Santa Barbara International Polo Training Center is a private corporation  
28 organized under the laws of the State of California, and is located in Santa Barbara

1 County, California. Channelkeeper is informed and believes, and thereon alleges, that  
2 the Santa Barbara International Polo Training Center owns and/or operates the Polo  
3 Facility.

4 **IV. STATEMENT OF FACTS**

5 17. Channelkeeper is informed and believes, and thereon alleges, that the Polo  
6 Club hosts polo tournaments and training throughout the year.

7 18. Channelkeeper is informed and believes, and thereon alleges that the Polo  
8 Club maintains four polo fields, which, at a minimum, are open for practice and training  
9 throughout the polo season, which lasts from April to October.

10 19. Channelkeeper is informed and believes, and thereon alleges that the Polo  
11 Club hosts polo events on at least 45 days per year.

12 20. Channelkeeper is informed and believes, and thereon alleges that during  
13 polo events at the Polo Facility, each polo player typically has a string of at least eight  
14 horses, and open field games have four players per side per game. Therefore,  
15 tournaments at the Polo Facility will host teams of well over 150 horses more than 45  
16 days of the year.

17 21. Channelkeeper is informed and believes, and thereon alleges that the Polo  
18 Facility is capable of providing stabling facilities for over 350 horses.

19 22. Channelkeeper is informed and believes, and thereon alleges, that the Polo  
20 Facility collects manure and other stable wastes and piles them in a large uncovered  
21 storage area located near the stables.

22 23. Channelkeeper is informed and believes, and thereon alleges that horse  
23 manure from horse transport, polo games, and polo preparation is spread throughout the  
24 Polo Facility.

25 24. Channelkeeper is informed and believes, and thereon alleges that non-  
26 stormwater discharges, such as those resulting from the washing down of horses,  
27 stables, and other areas, are discharged from the Polo Facility to Receiving Waters via  
28

culverts, ditches, and the storm water drainage system (hereinafter collectively referred to as the "storm water drainage system").

25. Channelkeeper is informed and believes, and thereon alleges that storm water is discharged from the Polo Facility to Receiving Waters via the storm water drainage system.

26. Channelkeeper is informed and believes, and thereon alleges, that pollutants in the Polo Facility's waste such as fecal coliform, giardia, cryptosporidia, E. coli, enterococcus bacteria, and salmonella are exposed to storm water and non-storm water flows.

27. Channelkeeper is informed and believes, and thereon alleges that storm water and non-storm water from the Polo Facility transport manure, bedding, feed, stable wastes, and other pollutants associated with the Polo Facility operations into the storm water drainage system, and present an imminent and substantial danger to human health and the environment.

28. Members of Channelkeeper are exposed to manure, pathogens, excess nutrients, antibiotics, hormones and other harmful pollutants from Defendants waste handling practices when they walk, take their pets out for exercise, fish, swim, camp, or otherwise use and enjoy the Receiving Waters. Exposure to these contaminants can cause severe illness and, in some cases can be fatal.

29. Many animal species, including endangered species, are susceptible to diseases brought on by exposure to fecal coliform, enterococcus, cryptosporidia, escherichia coli, salmonella and other pathogens present in the polluted discharges from the Polo Facility. Animal species are also susceptible to many diseases common in horses that are not transmissible to human beings.

30. Surface water contamination from the Polo Facility affects aquatic organisms in Receiving Waters as the sheer volume of contaminants makes waterways uninhabitable and can lead to fish kills. The excessive amounts of nutrients discharged

1 from the Polo Facility into Receiving Waters also devastates the local ecosystem by  
2 leading to algae blooms, which can include blooms of toxic or nuisance algae.

3 31. Channelkeeper is informed and believes, and thereon alleges that the Polo  
4 Club has never obtained an individual NPDES permit nor sought coverage under a  
5 general NPDES permit for its discharge of pollutants to Receiving Waters.

6 32. The Receiving Waters into which the Polo Facility discharges polluted storm  
7 water and non-storm water are waters of the United States.

8 **V. STATUTORY BACKGROUND**

9 **A. The Clean Water Act**

10 33. The Clean Water Act prohibits the discharge of pollutants from a point  
11 source to the waters of the United States, except pursuant to and in compliance with an  
12 NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. 33  
13 U.S.C. § 1311.

14 34. The CWA defines "pollutant" to include solid waste, biological materials,  
15 chemical wastes, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).

16 35. Under the regulations in effect after April 14, 2003, the CWA definition of a  
17 CAFO includes any lot or facility that:

18 a. feeds, confines, or stables 150 to 499 horses (40 C.F.R. §  
19 122.23(b)(6)(i)(F)) for a total of 45 days or more during any 12 month period (40  
20 C.F.R. § 122.23(b)(1)(i)), and

21 b. discharges pollutants into navigable waters through a man-made ditch,  
22 flushing system or other similar man-made device (40 C.F.R. § 122.23(b)(6)(ii)(A)).

23 36. Prior to April 14, 2003, a facility that fed, confined, or stabled more than  
24 150 horses for a total of 45 days or more during any 12 month period and discharged  
25 pollutants into navigable waters through a man-made ditch, flushing system or other  
26 similar man-made device was also defined as a CAFO under the CWA. (40 C.F.R. §  
27 122.23(b)(1), (b)(3); 40 CFR Part 122, Appendix B [prior to April 14, 2003  
28 amendments].)

1 37. CAFOs are point sources under the CWA and require NPDES permits for  
2 discharges or potential discharges of pollutants. 33 U.S.C. § 1362(14); 40 C.F.R. §  
3 122.23(a).

4 38. Section 505(a)(1) of the CWA provides for citizen enforcement actions  
5 against any "person" for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1).

6 39. Section 505(d) of the Clean Water Act permits prevailing parties to recover  
7 costs, including attorneys' and experts' fees. 33 U.S.C. § 1365(d).

8 40. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
9 1365(a).

10 41. Each separate violation of the Clean Water Act subjects the violator to a  
11 penalty of up to \$27,500 per day per violation for all violations occurring between  
12 November 4, 1999, and March 15, 2004. After March 15, 2004, a violator is subject to  
13 penalties up to \$32,500 per day per violation. 33 U.S.C. § 1319(d); Adjustment of Civil  
14 Monetary Penalties for Inflation, 40 C.F.R. §19.4.

#### 15 **B. Resource Conservation and Recovery Act**

16 42. RCRA establishes a comprehensive statutory scheme for the management of  
17 solid and hazardous wastes. Its objective is to "promote the protection of health and the  
18 environment" by improving solid and hazardous waste management. 42 U.S.C. § 6902  
19 (a).

20 43. RCRA defines "solid waste" to include manure and other stable wastes, and  
21 defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or  
22 placing of any solid waste or hazardous waste into or on any land or water so that solid  
23 waste or hazardous waste or any constituent thereof may enter the environment or be  
24 emitted into the air or discharged into any waters, including ground waters." 42 USC §  
25 6903(27); 42 USC § 6903(3).

26 44. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972 (a)(1)(B), permits citizen  
27 enforcement actions for injunctive relief against any "person" who has contributed or  
28 who is contributing to the past or present handling, storage, treatment, transportation, or

disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

45. RCRA defines “person” to include an individual, trust, firm, joint stock corporation, corporation, partnership, or association. 42 U.S.C. § 6903(15).

## VI. ALLEGATIONS

### FIRST CAUSE OF ACTION

**Unpermitted Discharges  
in Violation of the Clean Water Act  
(Violations of 33 U.S.C. § 1311)**

46. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

47. The Clean Water Act prohibits the discharge of pollutants to waters of the United States without an NPDES permit. 33 U.S.C. § 1311(a).

48. CAFOs are point sources that are required to obtain NPDES permits for discharges or potential discharges of pollutants to waters of the United States. 33 U.S.C. § 1362(14); 40 C.F.R. § 122.23(a).

49. Plaintiff is informed and believes, and thereon alleges that Defendants' Polo Facility meets the CWA's definition of a CAFO under both the current regulations and those in effect prior to April 14, 2003 because it feeds, confines, and stables 150 or more horses for more than 45 days in any 12 month period, and discharges pollutants into navigable waters via man-made ditches, flushing systems, and other similar man-made devices on a continuous basis. 40 C.F.R. § 122.23(a), (b)(6) [Prior to April 14, 2003 amendments: 40 C.F.R. § 122.23(b)(1), (b)(3)].

50. Plaintiff is informed and believes, and thereon alleges, that Defendants have failed to obtain an NPDES permit for its discharges of pollutants to Receiving Waters.

51. Defendants have been in violation of the CWA every day since at least December 13, 1999.

1        52. Defendants will continue to be in violation of the CWA each day they  
2 operate without NPDES permit coverage.

3        53. Failure to obtain NPDES coverage is an ongoing violation of the Clean  
4 Water Act.

5        54. Every day that the Defendants operate without NPDES permit coverage is a  
6 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

7        55. By committing the acts and omissions alleged above, Defendants are subject  
8 to an assessment of civil penalties pursuant to Sections 309(d) and 505 of the CWA, 33  
9 U.S.C. §§ 1319(d) and 1365.

10       56. An action for injunctive relief under the CWA is authorized by 33 U.S.C. §  
11 1365(a). Continuing commission of the acts and omissions alleged above would  
12 irreparably harm Plaintiff and the citizens of the State of California, for which harm  
13 they have no plain, speedy, or adequate remedy at law.

14       Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

15                                **SECOND CAUSE OF ACTION**  
16                                **Imminent and Substantial Endangerment**  
17                                **in Violation of RCRA**  
                                  **(42 U.S.C. § 6972)**

18       57. Plaintiff incorporates the allegations contained in the above paragraphs as  
19 though fully set forth herein.

20       58. Section 7002 (a)(1)(B) of RCRA (42 U.S.C. § 6972 (a)(1)(B)) provides for  
21 injunctive relief in citizen enforcement actions against any person whose past or present  
22 handling, treatment, storage, transportation or disposal of solid or hazardous waste  
23 creates an imminent and substantial endangerment to human health and the  
24 environment.

25       59. Plaintiff is informed and believes, and thereon alleges, that Defendants  
26 handle, dispose, and/or store, within the meaning of RCRA, solid waste such as horse  
27 manure, feed, bedding, and other stable wastes, on land in an improper manner such that  
28

1 raw manure, pathogens, excess nutrients, antibiotics, hormones and other harmful  
2 pollutants have entered and continue to enter Receiving Waters. This handling,  
3 disposal, and/or storage has contributed to and continues to contribute to the pollution of  
4 Receiving Waters.

5 60. Plaintiff is informed and believes, and thereon alleges, that the extensive  
6 contamination of Receiving Waters caused by Defendant's past and present handling,  
7 storage, and disposal of solid waste poses an imminent and substantial threat to human  
8 health and the environment.

9 61. An action for injunctive relief under the RCRA is authorized by 42 U.S.C. §  
10 6972(a)(1)(B). Continuing commission of the acts and omissions alleged above will  
11 irreparably harm plaintiff and the citizens of the State of California, for which they have  
12 no plain, speedy or adequate remedy at law.

13 Wherefore, Plaintiff prays judgment against the Defendants as set forth hereafter.

14 **VII. RELIEF REQUESTED**

15 62. Wherefore, Plaintiff respectfully requests that this Court grant the following  
16 relief:

17 a. A court order declaring Defendants to have violated and to be in  
18 violation of Section 301(a) of the CWA, (33 U.S.C. § 1311(a)), for their unpermitted  
19 discharges of pollutants from the Polo Facility;

20 b. A court order enjoining the Defendants from further operations at the  
21 Polo Facility without an NPDES permit, as required by CWA Sections 301 (33 U.S.C. §  
22 1311);

23 c. A court order declaring Defendants to have violated and to be in  
24 violation of RCRA section 7002 (42 U.S.C. § 6972(a)(1)(B)), for its unlawful handling  
25 storage, and disposal of solid waste;

26 d. A court order requiring Defendants to remediate all contamination of  
27 or other damage to the environment resulting from its past and present handling,  
28 storage, and disposal of solid wastes pursuant to 42 U.S.C. § 6972(a);

1 e. A court order enjoining Defendants from handling, storing, or  
2 disposing of waste generated at the Polo Facility in a manner that poses an imminent  
3 and substantial endangerment to health or the environment.

4 f. A court order assessing civil monetary penalties of up to \$27,500 per  
5 day per violation for each violation of the CWA and RCRA at the Polo Facility  
6 occurring between December 13, 1999, and March 15, 2004, and up to \$32,500 per day  
7 per violation for violations occurring after March 15, 2004, as permitted by 33 U.S.C. §  
8 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

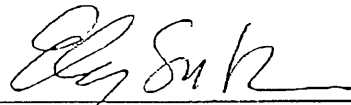
9 g. A court order awarding Channelkeeper its reasonable costs of suit,  
10 including attorney, witness, expert, and consultant fees, as permitted by Section 505(d)  
11 of the Clean Water Act, 33 U.S.C. § 1365(d), and Section 7002(e) of the Resource  
12 Conservation and Recovery Act, 42 U.S.C. § 6972(e);

13 h. Any other relief as this Court may deem appropriate.

14  
15 Dated: March 17, 2005

Respectfully submitted,

17 LAWYERS FOR CLEAN WATER

18 

19 Eliza Smith

20 Attorney for Plaintiff

21 Santa Barbara Channelkeeper



**LAWYERS FOR CLEAN WATER  
2515 WILSHIRE BOULEVARD  
SANTA MONICA, CA 90403**

---

Stephen Johnson, Acting Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1100  
Washington, D.C. 20460

1102A

---